

OCT 30 1970

F. ROBERT SEAYER, CLERK

In the Supreme Court of the
United States

OCTOBER TERM, 1970

No. 154RONALD JAMES, *et al.*,
vs. *Appellants,*ANITA VALTIERRA, *et al.*

No. 226VIRGINIA C. SHAFFER,
vs. *Appellant,*ANITA VALTIERRA, *et al.*

On Appeal from the United States District Court
for the Northern District of California

Opposition of Appellants to Motions of the National
Urban Coalition, *et al.*, and NAACP Legal Defense
and Educational Fund, Inc. *et al.*, for Leave to
File Briefs *Amici Curiae*

DONALD C. ATKINSON,
412 City Hall
San Jose, California 95110
Attorney for Appellants
Ronald James, et al.

MOSES LASKY
Brobeck, Phleger & Harrison
111 Sutter Street
San Francisco, California 94104
Attorney for Appellant
Virginia C. Shaffer

Of Counsel:

MALCOLM T. DUNGAN

111 Sutter Street
San Francisco, California 94104

In the Supreme Court of the United States

OCTOBER TERM, 1970

No. 154

RONALD JAMES, *et al.*,
Appellants,

vs.

ANITA VALTIERRA, *et al.*

No. 226

VIRGINIA C. SHAFFER,
Appellant,

vs.

ANITA VALTIERRA, *et al.*

On Appeal from the United States District Court
for the Northern District of California

Opposition of Appellants to Motions of the National Urban Coalition, *et al.*, and NAACP Legal Defense and Educational Fund, Inc. *et al.*, for Leave to File Briefs *Amici Curiae*

Pursuant to Rule 42(3) of the Court's Rules, Ronald James, *et al.*, appellants in No. 154, and Virginia C. Shaffer, appellant in No. 226, object to the motions of The National Urban Coalition, *et al.*, and NAACP Legal Defense and Educational Fund, Inc., *et al.*, for leave to file briefs *amici curiae* herein.

Already on file are a 78-page brief of appellees Valtierra, *et al.*, plaintiffs below, and a 38-page brief of Housing Authority of the City of San Jose, which was a defendant below and, styling itself appellee, seeks affirmance of the judgment against it. The Solicitor General has advised that in a few days he will be filing a brief in support of appellees.

1. Two proposed *amici* briefs are tendered for filing: One on behalf of the National Urban Coalition and 15 other named organizations (hereinafter "Urban Coalition Br."), and the other on behalf of NAACP Legal Defense and Educational Fund, Inc. and National Office for the Rights of the Indigent (hereinafter "Legal Defense Fund Br.").

2. Neither motion complies with Rule 42(3), second sentence. Neither sets forth any "facts or questions of law that have not been, or reasons for believing that they will not adequately be, presented by the parties". In fact, neither motion says anything at all about any factual or legal issues relevant to the disposition of the case. The most either says is that movants believe they can place the issues "in a national perspective" (Legal Defense Fund Mo. 4-M; *cf.* Urban Coalition Mo. ii); but what "relevancy to the disposition of the case" (Rule 42(3)) that may have, we are not told. The Urban Coalition Motion violates Rule 42(3) in another way: it fails to "concisely state the nature of the applicant's interest."¹

3. Appellants received no request to consent to *amici* briefs from any of the 15 organizations which now seek to join with the Urban Coalition.² Neither the request of the Urban Coalition nor

1. The caption and text under "The Interest of the Amici" occupy the first eleven pages of the subjoined brief. Had they been placed in the motion, as the Rule requires, it would have exceeded the 5-page limitation in the Rule.

2. The Statement at Urban Coalition Mo. ii that "Petitioners requested consent . . ." is simply incorrect. The request came from Urban Coalition alone, and for it alone. Not until receipt of the motion had we any inkling that any of the 15 others wished to appear in the case. As to this, see ¶ 4, 7, *infra*.

that of the Legal Defense Fund in any way specified what the interest of the applicant was, and the request of the Urban Coalition did not even state what position it proposed to take in this Court. Appellants refused consent, counsel believing that the spirit of Rule 42 (which contemplates extrajudicial disposition of the question of participation by *amici* in the first instance) requires an applicant to disclose both his interest and his position when seeking the consent of parties.

4. We respectfully submit that the purpose of the proposed *amici* briefs is not to aid the Court by the submission of reasoning to reach a proper judgment in the cause, but to impose upon the Court knowledge of the desire of a large number of special interest groups for a particular judgment.* That is not the office of an *amici* brief. Thus Stern & Gressman, Supreme Court Practice (4th ed.), states, p. 482 n.29, quoting from a policy statement of the Solicitor General's office in cases where *amici* seek to be heard,

"... The Department of Justice frowns upon the filing by *amici* with merely an academic interest at one extreme, or those who merely wish to engage in propaganda on the other. Consent is given 'where the applicant has a concrete, substantial interest in the decision of the case, and the proposed brief would assist the Court by presenting relevant arguments or materials which would not otherwise be submitted'."

5. The proposed briefs are simply repetitious of the main Brief of Appellees, which itself extends to 78 pages. The 63-page Urban Coalition Brief adds nothing, except for a 6½ page suggestion (pp. 46-52) that the Article of the California Constitution here assailed (which only provides for a referendum on housing projects) somehow interferes with the right of interstate travel!

*That this is so is shown by the fact that National Urban Coalition actually issued a press release simultaneously with the tendering of its proposed brief in this Court on October 26th. See New York Times, October 27th, 1970, p. 19, col. 2.

That far-fetched argument was not raised by the complaint, in the court below, or by the parties, nor is it involved in any question presented to this Court in Jurisdictional Statements or responses. The 35-page Legal Defense Fund Brief raises no question not thoroughly briefed by appellees, except for a 3-page argument that a referendum that does not speak of race or refer to race is a "badge of slavery"!

6. Appellees have no need for the assistance of the would-be *amici* in the presentation of their case. Appellees are not represented by incompetent counsel, and they are not unable to engage the best and most zealous legal representation. Appellees already have five attorneys of record, *all financed by public or quasi-public funds*³; in addition, the Housing Authority defendants—who seek affirmance of the judgment against them—are represented here by able counsel, a member of the largest private law firm in California. The Solicitor General, who needs no consent from us to file a brief *amicus curiae* (Rule 42(4)), has already indicated his interest and his position in this case by a motion (not served on us) for leave to present oral argument in support of appellees. The Court denied that motion October 19, 1970.

7. The motions for leave to file are out of time. Rule 42(2) provides that, whether filed on consent or on order of the Court, an *amicus* brief must be "presented within the time allowed for the filing of the brief of the party supported." Rule 42(3) provides that when consent of a party is refused, the motion for leave to file must be "timely . . . presented to the court." Plainly these provisions mean that, if consent to the *amicus* brief is refused, the proposed *amicus* must file his motion promptly enough so that the Court may act on it *before* the running of the time of the party

3. Two of counsel for appellees give as their addresses the Law Schools of the University of California and Stanford University. The other three are affiliated with the Legal Aid Societies of San Mateo and Santa Clara Counties, which we understand are financed by OEO money.

supported to file his brief. Here, appellant Shaffer's brief was due, and was filed (without request for extension) on August 13, 1970; near the end of August, we received and refused the request of Urban Coalition (and it alone) for consent to an *amicus* brief. Appellants James *et al.* obtained one extension of time to file their brief; not until that had expired did Legal Defense Fund even ask for consent, which was received September 23rd and refused on or about September 25th. In the face of all this, proposed *amici* do not even present their motions until the very day the briefs of the parties supported—after an extension of time requested and received by them—are due! Even a minimum of diligence would have enabled proposed *amici* to comply comfortably with the time limits plainly expressed in the Rule.

The result of these delays to appellants is that they would be confronted with the necessity of replying to 214 pages of briefs, plus whatever the Solicitor General may file. Reception of the *amici* briefs, we submit, is oppressive to appellants, and aids the Court not at all.

CONCLUSION

For the foregoing reasons, the motions of The National Urban Coalition, *et al.*, and NAACP Legal Defense Fund, *et al.*, for leave to file briefs *amici curiae* should be denied.

Respectfully submitted,

DONALD C. ATKINSON,

*Attorney for Appellants Ronald
James, et al.*

MOSES LASKY

*Attorney for Appellant
Virginia C. Shaffer*

Of Counsel:

MALCOLM T. DUNGAN

October 28, 1970